

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Trial Court Presiding Judges Advisory Committee
Hon. Frederick Paul Horn, Chair
Court Executives Advisory Committee
Mr. Alan Slater, Chair
Kenneth L. Kann, Supervising Attorney
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DATE: September 18, 2003

SUBJECT: Ethics Training for Judicial Council Members and Judicial Branch
Employees (adopt Cal. Rules of Court, rule 6.301) (Action Required)

Issue Statement

An existing statute that mandates periodic ethics training for all officers and employees of “state agencies” who file statements of economic interests does not apply to trial court employees, and it is not clear whether it applies to employees of the appellate courts. Thus, some members of the judicial branch are required to disclose economic interests, but they may not be subject to the mandatory ethics training statute, resulting in a gap in coverage.

The text of the proposed rule is attached at page 5.

Recommendation

The Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee recommend that the Judicial Council, effective January 1, 2004, adopt rule 6.301 of the California Rules of Court. This rule would require ethics training for members of the Judicial Council and all judicial branch employees who are required to file statements of economic interests.

Rationale for Recommendation

Since 1999, members of the Judicial Council and certain employees of the Administrative Office of the Courts (AOC) and the appellate courts have been taking an ethics orientation course that is required for certain officers and employees of “state agencies.”

(Gov. Code, § 11146 et seq.) Government Code section 11146 et seq. (attached for reference at pages 10–11), which became effective January 1, 1999, requires these individuals to complete the ethics training within six months after assuming their positions and every two years thereafter. The statute also requires state agencies to offer to its “filers,” on a semiannual basis, an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. “Filers” refers to members, officers, and employees of a “state agency” who are required to file a statement of economic interests under the Political Reform Act.¹

It is clear that these statutes do not apply to trial court employees, and it is unclear whether they apply to appellate court employees. The Fair Political Practices Commission has concluded that trial and appellate courts are not “state agencies” within the meaning of Government Code sections 11146 and 82049 (which defines “state agency”). However, the AOC’s Office of the General Counsel has concluded that section 11146 does apply to certain employees of the Supreme Court and the Courts of Appeal, as well as to members of the Judicial Council and employees of the AOC, because those entities are “state agencies.”

Since Government Code section 11146 took effect, the Office of the Attorney General has offered an online ethics course to filers who are covered by the statute, i.e., those who are required to file an annual statement of economic interests. Completion of this course, which takes approximately one and one-half hours, satisfies the statutory requirement. The AOC’s Education Division is in the process of developing an online course geared specifically toward members of the judicial branch. The course will be available to Judicial Council members and judicial branch employees by January 1, 2004, which would be the effective date of the proposed rule.

Because the statutory ethics training requirement applies only to “state agencies,” and because the scope of that term is unclear with respect to the judicial branch, there is a gap in the existing legal requirement for ethics training. Trial court employees are not required to take this training, and it is not clear whether other members of the judicial branch are required to take it. To ensure that members of the judicial branch are appropriately trained on ethics issues, this rule would specify ethics training requirements for members of the Judicial Council and all judicial branch employees who are required to file statements of economic interests.

Proposed rule 6.301 would mandate that Judicial Council members and judicial branch employees (including trial court employees) who are required to file statements of economic interests take an ethics orientation course within six months of assuming their

¹ Section 11146 applies only to those employees who are required to file a statement of economic interests under either article 2 (commencing with § 87200) or article 3 (commencing with § 87300) of chapter 7 of title 9 because of the position he or she holds with the agency.

positions and every two years thereafter. This requirement parallels the one now contained in section 11146 for officers and employees of “state agencies.” The rule would not apply to commissioners and referees because, like judges, they are required to attend ethics training if they wish to receive coverage under the Commission on Judicial Performance master insurance policy. In addition, new commissioners and referees attend New Judge Orientation, which contains an ethics component that is two and one-half days long.

Alternative Actions Considered

No alternative actions were considered because none was proposed.

Comments From Interested Parties

There were 10 responses to the invitation to comment. Six commentators supported the proposed rule without comment, and four stated they would support the proposal only if amended.

Two commentators (a lead research attorney for one court and a court executive officer) suggested that there should be an exclusion for court research attorneys because they are required to take ethics training to comply with the State Bar’s mandatory continuing legal education (MCLE) requirements.² One of them notes that justices, judges, commissioners, and referees are not covered by the proposed rule because they take ethics training as part of New Judge Orientation and as a condition of receiving state-sponsored coverage under the Commission on Judicial Performance master insurance policy. However, the ethics training contemplated by this rule applies only to those research attorneys who are listed in a court’s conflict-of-interest code, i.e., those who must file statements of economic interests. The research attorneys in this category are likely to be those who are involved in administrative decisions. The proposed ethics training would cover different areas, such as conflict-of-interest provisions under the Political Reform Act, than the ethics courses an attorney would take to satisfy MCLE requirements. Finally, because the AOC is an approved MCLE provider, the Education Division may certify the training for MCLE self-study ethics credit. For these reasons, research attorneys should not be excluded.

The court executive officer who proposed an exclusion for research attorneys also requested that the Education Division be directed to change the content of the training every two years, with new scenarios and updated case law, so that the course is not identical every two years. As the law changes, the content will be modified. Other aspects of the course may be altered periodically as well.

² Attached to this report, at pages 6–9, is a chart with the comments received and the committee responses to the comments.

One commentator, a superior court judge, stated that due to the current budget crisis in California, this proposed rule should not be implemented for two years. He notes that in the absence of any significant ethical violations by the judicial branch's senior staff, resources should not be diverted at this time to support this proposal. In the meantime, he suggests, the judicial branch should be able to monitor its managers and senior staff. The Education Division has nearly completed work on an online ethics training that will be available to judicial branch employees and Judicial Council members and that will satisfy the training requirement. Thus, very few resources beyond those already committed to this project will be used. In addition, the amount of staff time devoted to completing the training is minimal because the online course can be completed in one and one-half hours or less.

Finally, one commentator, speaking on behalf of the Complex Litigation Committee of the Litigation Section of the State Bar of California, stated that the committee believes that current employees who have not taken an ethics course before the enactment of this rule may be inadvertently omitted from the effect of the rule. She suggests that a subdivision (c)(3)(C) be added that states: "For all other employees, at least once during each consecutive two calendar years." This commentator makes a valid observation that there may be employees who are not new (thereby covered by subdivision (c)(3)(B)) and who will not have taken the ethics course before the effective date of the rule (thereby covered by subdivision (c)(3)(A)). For example, current trial court employees who file statements of economic interests would not fall into either category. The proposed rule has been modified to add a subdivision (c)(3)(C), which states: "For all other employees, within six months of the effective date of this rule and at least once during each consecutive two calendar years thereafter."

Implementation Requirements and Costs

The Education Division has developed an online ethics course that judicial branch employees can take to satisfy the requirement of the proposed rule. The online course will be available as of the effective date of the proposed rule. That division will also modify the course as the law changes. Other than AOC staff time required to complete the course, update it, and monitor compliance, and court staff time to monitor compliance, there are no implementation costs.

Attachments

Rule 6.301 of the California Rules of Court would be adopted, effective January 1, 2004, to read:

Rule 6.301. Ethics training for Judicial Council members and judicial branch employees

(a) [Authority] This rule is adopted under section 11146 et seq. of the Government Code and article VI, section 6 of the California Constitution.

(b) [Definitions] For purposes of this rule, “judicial branch employee” includes an employee of a trial or appellate court or the Administrative Office of the Courts, but does not include court commissioners or referees.

(c) [Judicial Council members and judicial branch employees]

(1) The Administrative Office of the Courts must provide an ethics orientation course for Judicial Council members and for judicial branch employees who are required to file a statement of economic interests.

(2) Judicial Council members must take the orientation course within six months of appointment. If a member is appointed to a subsequent term, he or she must take the course within six months of the reappointment.

(3) Judicial branch employees who are required to file a statement of economic interests must take the orientation course as follows:

(A) For employees who have taken the orientation course before the effective date of this rule, at least once during each consecutive two calendar years after the date of the last attendance.

(B) For new employees, within six months of becoming an employee and at least once during each consecutive two calendar years thereafter.

(C) For all other employees, within six months of the effective date of this rule and at least once during each consecutive two calendar years thereafter.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Laurie E. Barber Chair Complex Litigation Committee of Litigation Section of California State Bar San Diego	AM	Y	The committee believes that current employees who have not taken an orientation course before the enactment of this rule may be inadvertently omitted from the effect of this rule and suggests that subdivision (c)(3)(C) be added as follows: “For all other employees, at least once during each consecutive two calendar years.”	Agreed. Proposed rule 6.301 has been modified, to include new section (c)(3)(C), as follows: “For all other employees, within six months of the effective date of this rule and at least once during each consecutive two calendar years thereafter.”
2.	Mr. David H. Bent Attorney California State Auto Assn. Sacramento	A	N	This proposal appears to encompass appropriate clarification and/or extension of existing requirements.	No response necessary.
3.	Ms. Robin Brandes-Gibbs Research Attorney Superior Court of Orange County	AM	N	There should be an exclusion from the rule for trial court research attorneys and commissioners who are required to take ethics classes to comply with the State Bar’s mandatory continuing legal education requirements.	The ethics training contemplated by this rule applies only to research attorneys who are listed in a court’s conflict-of-interest code. For those attorneys, who are more likely to be involved in administrative decisions, the ethics training covers different areas, such as conflict-of-interest provisions under the Political Reform Act, than ethics courses an attorney would take to satisfy MCLE requirements. In addition, because the AOC is an approved MCLE provider, the Education Division may certify the training for MCLE self-study ethics credit. For these reasons, research attorneys should not be excluded. As to commissioners, they are excluded by the proposed rule.
4.	Mr. Gabriel A. Jackson Attorney	A	Y	Our office and our clients are very much in support of the proposal.	No response necessary.

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	Jackson & Wallace LLP San Francisco				
5.	Ms. Patricia Johnson Attorney Redding	A	N	Yes to the changes!	No response necessary.
6.	Ms. Suzanne N. Kingsbury Presiding Judge Superior Court of El Dorado County	A	N	No comment.	No response necessary.
7.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County	AM	N	<p>In the comments section, it points out that judges, commissioners, and referees are exempt from the Judicial Council ethics training based upon ethics training they are required to take as judicial officers. Court staff attorneys are required to take ethics training as part of their Mandatory Continuing Legal Education and should be exempt from this Judicial Council ethics training requirement on the same ground as judicial officers.</p> <p>For those employees who are required to attend biennial ethics training, CJER should be directed to roll out new content, new scenarios, and education concerning updated case law. While some reinforcement is good, we'll have difficulty getting attendance if it is the identical class every two years.</p>	<p>The ethics training contemplated by this rule addresses specifically the conflict-of-interest issues that research attorneys might encounter as a result of their employment. In addition, because the AOC is an approved MCLE provider, the Education Division may certify the training for MCLE self-study ethics credit. For these reasons, research attorneys should not be excluded.</p> <p>As the law changes, the content will be modified. Other aspects of the course might be altered periodically as well.</p>
8.	Hon. Thomas M. Maddock Judge Superior Court of Contra Costa County	AM	N	Ethics training is certainly a valuable and important part of the training that should be provided to our managers and other employees in sensitive positions in the judicial branch of state government. We are,	The Education Division has nearly completed work on an online ethics training that will be available to judicial branch employees and Judicial Council members

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				<p>however, presently in the grips of the worst budget crisis in state history. When the court proposes to spend new money for such training, that money only comes from laying off current employees or by delaying the hiring of new employees in critical vacancies. I believe the failure of the Judicial Branch to objectively weigh the priorities and consequences of implementing this program on January 1, 2004, is a violation of the most basic tenets of ethics.</p> <p>Ethics are supposed to provide us with a discipline that deals with what is good and what is bad in a framework of moral duty and obligation. It is our duty to provide the taxpayers of California the most cost-effective, honest and ethical justice system possible. To divert resources to this training, that frankly does not have the priority of the day-to-day work that we are carrying out with 20% less employees than we had 18 months ago, seemingly ignores our true moral and legal obligations. If there was evidence of significant ethical violations by our senior staff, this timetable for implementation might make some sense.</p> <p>If this rule is implemented on the present schedule, I would like some ethically trained person to help me explain to a low level clerk why he or she must be fired so we can afford to send 10 of our senior staff to training next year, and explain to our stakeholders in this community why we will be delaying their access</p>	<p>and that will satisfy the training requirement. Thus, very few resources beyond those already committed to this project will be required.</p> <p>Staff members who are required to take the training will be able to do so online, and they will be able to complete the course in one and one-half hours or less.</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>to justice just a little longer so we can do this training.</p> <p>I recognize that our Legislature has imposed this requirement on the executive branch of government. They are such models of ethical behavior, not to mention budget acumen, that we should leap to duplicate everything they do. I think not. We are, in fact, a separate branch of government and we have judicial officers in direct control of our senior staff. Perhaps we can rely just a little longer on that ethical base of this branch of government.</p> <p>An ethical decision on this issue would postpone any such implementation for two years, or until after our budget crisis is over. Any other decision would be immoral. We should be able to monitor our own managers and senior staff until money becomes available.</p>	
9.	Mr. Leonard Sacks Attorney Granada Hills	A	N	No comment.	No response necessary.
10.	Robert C. Von Barga Attorney Ryan, Datomi & Flores Glendale	A	N	It is my intention to indicate agreement with all the proposed changes.	No response necessary.

Government Code Sections 11146 et seq.

§ 11146. Definitions

For purposes of this article, the following terms have the following meanings:

(a) “State agency” has the same meaning as set forth in Section 82049, but does not include the Legislature.

(b) “Filer” means each member, officer, or designated employee of a state agency who is required to file a statement of economic interests under either Article 2 (commencing with Section 87200) or Article 3 (commencing with Section 87300) of Chapter 7 of Title 9 because of the position he or she holds with the agency.

§ 11146.1. Semiannual orientation course; official conduct of state officials

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials.

§11146.2. Attendance records

Each state agency shall maintain records indicating the specific attendees, each attendee’s job title, and dates of their attendance for each orientation course offered pursuant to Section 11146.1 for a period of not less than five years after each course is given. These records shall be public records subject to inspection and copying consistent with subdivision (a) of Section 81008 and otherwise subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

§11146.3. Requirement to attend; timing

Except as set forth in Section 11146.4, each filer shall attend the orientation course required in Section 11146.1, as follows:

(a) For a filer who holds a position with the agency on January 1, 2003, not later than December 31, 2003 and, thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2005.

(b) For a person who becomes a filer with the agency after January 1, 2003, within six months after he or she becomes a filer and at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter.

§ 11146.4. Exceptions; joint courses; course content requirements

(a) The requirements of Section 11146.3 shall not apply to filers with a state agency who have taken an equivalent ethics orientation course through another state agency or the

Legislature within the time periods set forth in subdivision (a) or (b) of Section 11146.3, as applicable.

(b) State agencies may jointly conduct and filers from more than one state agency may jointly attend an orientation course required by Section 11146.1, as long as the course content is relevant to the official duties of the attending filers.

(c) Before conducting each orientation course required by Section 11146.1, state agencies shall consult with the Fair Political Practices Commission and the Attorney General regarding appropriate course content.